

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRUSTEES FOR MICHIGAN BAC HEALTH
CARE FUND, et al.,

Plaintiffs,

v.

Case No. 07-12331
Hon. Sean F. Cox

C.S.S. CONTRACTING COMPANY, INC.,
and F. MICHAEL SPENCER,

Defendants.

**ORDER REGARDING SUPPLEMENTAL
BRIEFING AND GRANT OF SUMMARY JUDGMENT,
AS TO LIABILITY ONLY, ON TRUST FUND
PLAINTIFFS' CLAIM FOR UNPAID ERISA BENEFITS**

This matter is before the Court on Plaintiffs' Motion for Summary Judgment. A hearing was held on March 13, 2008. At the hearing, Plaintiffs' indicated their Motion seeks summary judgment on all three claims: (1) violation of the Employee Retirement Income Security Act ("ERISA"); (2) breach of the CBA and trust agreements; and (3) personal liability against Defendant Spencer. Defendants indicated they only believed the Motion addressed the ERISA claim with respect to the Trust Fund Plaintiffs.

As stated on the record, the Court **GRANTS** Plaintiffs' Motion for Summary Judgment against C.S.S. Contracting Company on Plaintiffs' ERISA claim, only as to liability and only with respect to the Trust Fund Plaintiffs. With respect to the remaining claims, the parties are hereby ordered to submit supplemental briefing as described below.

DEFENDANTS ARE HEREBY ORDERED to submit a supplemental response brief limited to Plaintiffs' claims for: (1) breach of the CBA and trust agreements; and (2) personal liability of Defendant Spencer. Additionally, as stated on the record, if Defendants object to the audit amount demanded by Plaintiffs, they must present evidence allowing for an accurate audit calculation as supplemental exhibits to their original Response to Plaintiffs' Motion for Summary Judgment. See *Michigan Laborer's Health Care Fund v. Grimaldi Concrete, Inc.*, 30 F.3d 692 (6th Cir. 1994). Defendants shall submit the supplemental response brief and any additional/supplemental exhibits **on or before March 28, 2008.**

PLAINTIFFS ARE HEREBY ORDERED to submit a reply brief within seven (7) days of the filing of Defendants' supplemental response brief.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: March 13, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 13, 2008, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager